

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

**BOTSWANA ENERGY REGULATORY
AUTHORITY
(BERA)**



and

**COMPETITION AUTHORITY
(CA)**



In view of strong collaboration in regulating the energy sector in a more competitive manner and to enhance operations and activities of market participants, the Botswana Energy Regulatory Authority ("BERA") and Competition Authority ("CA") have entered into this Memorandum of Understanding ("MoU") regarding consultation, cooperation and exchange of information related to the monitoring and oversight of the energy market within the jurisdiction of BERA and CA.

WHEREAS the Botswana Energy Regulatory Authority is established under Section 3 of the Botswana Energy Regulatory Authority Act of 2016 with the primary mandate of providing economic regulation of the energy sector in Botswana.

WHEREAS the specific powers and functions of BERA are sufficiently set out in Section 5 and 6 of the BERA Act.

WHEREAS the Competition Authority is a statutory body established under Section 4 of the Competition Act of 2009 with the mandate of preventing anti-competitive practices in the economy and removal of constraints on the free play of competition in the market and providing redress thereof.

WHEREAS the specific powers and functions of the CA are explicitly set out in Section 5 of the Competition Act of 2009.

WHEREAS Sections 25, 26 (1), 27 (1), 30 (1), 32 (1) and 52 (1) of the Competition Act describe and define all economic and commercial activities that may be entered into through arrangements or agreements by enterprises or business in any commercial sector and are deemed anti-competitive practices under the Competition Act:

WHEREAS Section 73 of the Competition Act creates an obligation for the CA to establish a mechanism through which they can maintain regular contact with sector regulators regarding the exercise of their respective responsibilities;

WHEREAS Section 62 (1) of the BERA Act mandates the Board to refer all issues relating to competition which may arise in the course of discharge of its functions to the CA.

u
KM

Y.P
RNS

AND WHEREAS the parties have expressed their willingness to cooperate with each other in the interest of facilitating their respective regulatory mandates;

NOW THEREFORE, the parties agree to conclude this Memorandum of Understanding as follows:

1. BASIS OF THIS MEMORANDUM OF UNDERSTANDING

- 1.1. BERA has the mandate of dealing with technical and economic regulation in the energy sector and its role shall be ensuring that services are provided in a competitive and non-discriminatory basis.
- 1.2. BERA ensures that the tariffs in the energy sector are fixed on the basis of a tariff methodology set up in a transparent manner taking into account government policy.
- 1.3. Some licenses are issued to energy operators through a competitive process while others are on the opposite. In monitoring these licenses, certain conditions are imposed on the licenses, a breach of which might result in anti-competitive practices.
- 1.4. The energy market in Botswana is small relative to other economies in the region such as South Africa, Zimbabwe and Zambia, this makes it risky and susceptible to monopolisation or oligopolist tendencies.
- 1.5. Mergers and acquisitions and any change in ownership of the energy licensee shall be first approved by the Botswana Energy Regulatory Authority only where such change will not negatively affect the performance of the licensed activity.
- 1.6. BERA is further mandated to protect and promote the interests of customers and consumers particularly in respect of tariffs, availability of services and variety of services offered throughout the country. All complaints on the provision of the services in the energy sector shall be handled by BERA.

Q Y.P
KM

- 1.7. The energy sector is a highly competitive sector and one of the major contributors to the wealth of the country and involves quite a diversified market.
- 1.8. The CA, in order to efficiently investigate, analyse and successfully prosecute cases of abuse of dominance, deception and collusion in the energy sector needs to collaborate with BERA to share information successfully.

2. SCOPE OF COOPERATION AND INFORMATION SHARING

2.1. The parties hereby agree on the following areas of cooperation;

2.1.1. The Parties shall endeavour to inform each other in advance of regulatory changes on other material events that may have a significant impact on their joint operations or activities as herein described.

2.1.2. Areas of coordination, cooperation or information sharing shall include but not limited to:

- i. providing each other with useful information on an investigation of anti-competitive behaviour when requested by the other party or proactively by any party without a request being made;
- ii. assisting each other with investigations, research and analysis of cases that one party may be engaged in concerning anti-competitive conduct of behaviour;
- iii. joint training seminars for employees of both parties in areas that can enhance an understanding of competition laws and practices;
- iv. consulting each other on a regular basis on matters of mutual interest;
- v. to seek clarity from each other on any media reports that may be related to matters connected with or incidental to the MoU;

a
KM
Y.P
RWS

- vi. each party shall be assumed and expected to bear their own costs and factor aspects of this MoU in their respective budget;
- vii. to the extent possible, all requests for information shall be in writing and signed by the Chief Executive Officers of the parties or their designated officers, of which the request shall specify
 - a) the information sought by a member party
 - b) a general description of the matter, the subject of the request and the purpose for which the information is sought; and
 - c) the desired time period for the reply and, where appropriate, the urgency thereof.
- viii. where joint investigations are carried out, the parties involved shall consult each other before either of them issues a media release concerning a transaction covered by this Agreement.

3. HANDLING OF CONFIDENTIAL INFORMATION

- 3.1. Each party shall endeavour to maintain public confidence in terms of whistle blowers and other sources of information, which shall not be unnecessarily disclosed to any party and cooperation in any way shall not be expected to be dependent on knowledge of the source of information.
- 3.2. While information may be used by any party in their enforcement activities, such information must protect the relevant confidential clauses and avoid unnecessary clouding of statutory impropriety by the party that provided the information.
- 3.3. This MoU shall be a public document and thus may be quoted generously by any party to the MoU.

GA
KM
Y.P
RWS

- 3.4. Unless otherwise expressly stated, all information sought or exchanged shall be deemed to be usable by the receiving party according to the legal framework establishing them.

4. THE JOINT WORKING COMMITTEE

- 4.1. A Joint Working Committee ("the committee") constituted by representatives of the parties as nominated by the parties shall be established pursuant to this MoU and shall function on an ongoing basis.
- 4.2. The functions of the Committee shall include:
- 4.2.1. to manage and facilitate cooperation and consultative meetings between the parties;
 - 4.2.2. to propose and advise both parties of any necessary amendments or changes to the operation or governance of this MoU from time to time;
 - 4.2.3. to coordinate the implementation, monitoring and evaluation of the activities to be carried out under this MoU and the annual plans developed;
 - 4.2.4. to record and keep details of any activity carried out for submission to the parties on the progress of the implementation of this MoU;
 - 4.2.5. to review progress regarding the implementation of this MoU;
 - 4.2.6. to propose or recommend any relevant matter connected with or incidental to their MoU.
- 4.3. The Committee shall hold two (2) meetings per year to discuss issues of common interest and cooperation.
- 4.4. The Parties shall each elect a contact person and avail their particulars and contact details to the other party. The contact persons shall be responsible for

u
KM
4. P
RWS

facilitating timeous assistance for requests for information and any matter connected to or incidental to the MoU.

5. UTILISATION OF RESOURCES

- 5.1. The parties may under necessary and lawful circumstances, share each other's available resources in order to bring the provisions of this MoU into full effect.

6. STATUTORY LIMITATIONS

- 6.1. The provision of, or request for, information under this MoU may be denied in the following instances;

- a) where compliance would require a party to act in a manner that would violate the applicable law;
- b) under circumstances where there is an imminent risk to national security or other overriding public interests; or
- c) when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

- 6.2. No provision of this MoU shall give rise to the right on the part of any person, entity or government authority other than the parties herein, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MoU.

7. VARIATION OF THE MoU

- 7.1. Any variation of this MoU shall have no legal effect and shall not be binding on the parties unless reduced to writing and signed by persons authorised to act on behalf of the parties.

Q
KAA

7.P
RNS

8. COMMENCEMENT

- 8.1. This MoU shall come into force on the date on which it is signed by persons authorised to act on behalf of both parties.

9. DURATION

- 9.1. This MoU will remain in operation for a period of five (5) years where after it will be reviewed and renewed for a further period of five (5) years.

10. IMPLEMENTATION AND ENFORCEMENT

- 10.1. It is incumbent upon the Chief Executive Officers of the parties to ensure that each Party carries out its obligations as agreed, and commits to undertaking to implement where reasonably possible the commitments under this MoU.
- 10.2. This MoU does not limit BERA or the CA from taking any steps to establish other MoUs with other relevant institutions that may be of assistance to their mandates.
- 10.3. This MoU does not affect the independence of the parties nor does it discharge them from their statutory obligations

11. SETTLEMENT OF DISPUTES

- 11.1. Any dispute arising from the interpretation or application of this MoU will be resolved amicably in good faith through consultation between the Parties and will not be referred to any tribunal, court of law or third party for settlement.

12. TERMINATION

- 12.1. This MoU may be terminated by either party giving thirty (30) days written notice in advance to the other party of its intention to terminate.

u
KM

T.P
RNS

- 12.2. The termination of this MoU will not affect the execution of any cooperative activity that has not been fully executed at the time of termination, unless otherwise agreed upon in writing by the parties.

13. DOMICILIUM CITANDI ET EXECUTANDI

- 13.1. The parties choose as their *domicilium citandi et executandi*, their respective addresses for all purposes arising out of or in connection with this MoU, or other such address of service as may be communicated in writing and at which addresses all the queries, instructions or correspondence shall be addressed or delivered to the parties as follows:

The Chief Executive Officer

Competition Authority

Plot 28, Matsitama Road

Private Bag 00101

Gaborone

Tel: (+267) 393 4278

Fax: (+267) 312 1013

The Chief Executive Officer

Botswana Energy Regulatory Authority

Plot 8842, Ext Town Centre, Lobatse

Private Bag 111

Lobatse

Tel: (+267) 533 0932

Fax: (+267) 533 0880

Q
KM

Y.P
RNS

We, the undersigned, hereby agree to the terms and conditions contained in this Memorandum of Understanding.

Signed at Gaborone on behalf of the Botswana Energy Regulatory Authority on this 13th day of November..... 2019 in presence of the undersigned witness



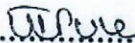
.....
Rose Seretse
Chief Executive Officer



.....
BOARD SECRETARY

Witness signature and Position

Signed at Gaborone on behalf of the Competition Authority on this 13th day of November..... 2019 in presence of the undersigned witness



.....
Tebelelo Pule
Chief Executive Officer



.....
DIRECTOR LEGAL ENFORCEMENT

Witness signature and Position